

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AUTOMATED TRANSACTIONS, LLC,

Plaintiff,

v.

ORDER
10-CV-407

FIRST NIAGARA FINANCIAL GROUP,
INC., and
FIRST NIAGARA BANK,

Defendants.

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1). On July 30, 2010, defendants filed a motion to dismiss the Second Amended Complaint for failure to state a cause of action. On August 31, 2010, Magistrate Judge filed a Report and Recommendation, recommending that defendants' motion to dismiss the Second Amended Complaint be denied, without prejudice to a later motion for summary judgment.

Defendants filed objections to the Report and Recommendation on September 17, 2010 and plaintiff filed a response thereto. The Court deemed oral argument on defendants' objections to be unnecessary.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge's Report and Recommendation, defendants' motion to dismiss the Second Amended Complaint is denied, without prejudice to a later motion for summary judgment.

The case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: February 11, 2011